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PENNSYLVANIA PUBLIC UTILITY COMMISSION
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Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th St., SW, TW-B204
Washington, DC 20554

**Re Application of Verizon Pennsylvania, Inc., et al., for Authorization Under
Section 271 of the Communications Act to Provide In-Region, InterLATA Service in
the Commonwealth of Pennsylvania; CC Docket No. 01-138**

Dear Ms. Salas:

Enclosed for filing at CC Docket No. 01-138, on behalf of the Pennsylvania Public Utility Commission (PAPUC), is original and one (1) copy of its Consultative Report pursuant to 47 U.S.C. § 271(d)(2)(B). Also enclosed are the concurring and dissenting statements of Commissioners Brownell and Fitzpatrick.

The PAPUC Consultative Report recommends that the application of Verizon Pennsylvania, Inc., for authorization under Section 271 of the Communications Act to provide in-region, interLATA service in the Commonwealth of Pennsylvania be granted.

Respectfully,

Bohdan R. Pankiw
Chief Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

Application of Verizon Pennsylvania, Inc., :
et al., for Authorization Under Section 271 :
of the Communications Act to Provide : CC Docket No. 01- 138
In-Region, InterLATA Service in the :
Commonwealth of Pennsylvania :

**CONSULTATIVE REPORT OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell, Commissioner
Aaron Wilson, Jr., Commissioner
Terrance J. Fitzpatrick, Commissioner

Pennsylvania Public Utility Commission
400 North Street
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Dated: June 25, 2001

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EXECUTIVE SUMMARY

The Pennsylvania Public Utility Commission (“PAPUC”) recommends that the Federal Communications Commission (“FCC”) grant to Verizon Pennsylvania Inc. (“Verizon PA”) authority to provide in-region, interLATA services in Pennsylvania. After a thorough and comprehensive investigation of Verizon PA’s compliance with the statutory requirements enumerated in section 271(c) of the federal Telecommunications Act of 1996 (“TA-96”),¹ the PAPUC finds that Verizon PA has taken the requisite steps to open its local exchange and exchange access markets in Pennsylvania to competition.

The PAPUC has been extensively involved in implementing the section 271 statutory requirements almost immediately after passage of TA-96. The PAPUC’s current investigation is the culmination of years of effort by the PAPUC, its staff, Verizon PA, and many interested parties to ensure strict and full compliance with each of the 14-point Checklist items listed in section 271(c). The section 271 proceeding conducted by the PAPUC at Docket No. M-00001435 consisted of 24 days of technical conferences among PAPUC staff and various industry representatives, formal discovery, literally hundreds of PAPUC data requests and responses, more than 5,000 of pages of testimony and supporting documentation, and three days of en banc public hearing before the PAPUC Commissioners. The PAPUC’s 271 proceeding was open to all interested parties, and in fact, there were 30 active participants that were involved in this process.

In the recommendation that follows, the PAPUC provides a detailed analysis supporting Verizon PA’s compliance based on the totality of the evidence presented in its 271 proceeding. The PAPUC advises the FCC that Verizon PA has met its obligations under TA-96. Specifically, Verizon PA has met its section 271(c)(1)(A) obligation by entering into some 188 interconnection agreements with competitive local exchange carriers (“CLECs”) approved by the PAPUC pursuant to section 252 of TA-96 to provide

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996), as codified in 47 U.S.C. §§ 151, et seq.

access and interconnection with Verizon PA's local phone network. In addition, the record developed shows that over 200 CLECs currently are authorized to provide local exchange service to either or both residential and business customers in Pennsylvania using their own facilities and those of Verizon PA. CLECs serve customers in Verizon PA's territory through more than 169,000 resold access lines, more than 174,000 UNE-P lines, and more than 547,000 facilities-based lines. The record also shows that Verizon PA has a legal obligation, under the approved interconnection agreements and PAPUC-approved tariffs, to provide the 14-Checklist items of section 271(c)(2)(B), and that Verizon PA is meeting its legal obligation to provide each of those 14 items.

The positions taken by the parties in our proceeding regarding Verizon PA's application have focused primarily on Checklist items 1 (interconnection), 2 (access to and pricing of unbundled network elements), 4 (unbundled local loops), 8 (white pages directory listings), and 14 (resale), although several of the other Checklist items were raised as well. As discussed below, however, the record evidence presented on each of these issues supports a finding that Verizon PA is meeting its section 271 obligations as to all 14 Checklist items. Indeed, this report provides an exhaustive analysis of each Checklist item, produced by a PAPUC team of telecommunications engineers, financial analysts, accountants, and lawyers. The PAPUC's overall examination included input from interested governmental agencies² and has focused on every aspect of Verizon PA's wholesale operations and service to CLECs.

There has been a comprehensive review of Verizon PA's operations support systems ("OSS") to verify that Verizon is meeting its obligation to provide these Checklist items. A test of Verizon's OSS was conducted by a third-party evaluator,

² Interested governmental agencies included the United States Department of Justice ("DOJ"), the Pennsylvania Office of Consumer Advocate ("OCA"), the Pennsylvania Office of Small Business Advocate ("OSBA"), and the Pennsylvania Office of Trial Staff ("OTS") within the PAPUC.

KPMG Consulting, L.L.C. (“KPMG Consulting”), acting under the direct supervision of the PAPUC. KPMG Consulting’s task was to analyze and to verify Verizon PA’s performance in three test families: (1) transaction validation and verification, (2) policies and procedures review, and (3) performance metrics reporting. The test covered nearly 600 individual test points across five test domains (pre-ordering, ordering and provisioning; maintenance and repair; billing; relationship management and infrastructure; and performance metrics) required by section 271. KPMG Consulting’s review within each domain was conducted through both an evaluation of Verizon PA’s existing policies and procedures and KPMG Consulting’s creation of a pseudo-CLEC doing business in Pennsylvania.

In addition, the PAPUC evaluated the results of a follow-up commercial availability period using actual CLEC data/experiences with Verizon PA’s OSS network for the months of January, February, and March 2001. KPMG Consulting acted as a consultant to the PAPUC during the commercial review period. The review intended to measure actual market performance by Verizon PA relating to these same test domains. The 18-month KPMG Consulting third-party test and the subsequent 90-day commercial availability review, taken together, demonstrate that Verizon PA’s OSS provides the 14 Checklist items required by section 271(c)(2)(B).

Moreover, in order to ensure that Verizon PA has adequate financial incentives to continue to meet its legal obligations after it has received approval under section 271 to enter the in-region interLATA market, the PAPUC has approved OSS performance measures, standards, and self-executing remedies under a Performance Assurance Plan (“PAP”). Under the terms of this PAP, Verizon PA may face over \$200 million per year in financial penalties if it fails to meet the specified performance standards approved by the PAPUC. Verizon PA has also withdrawn its appeal challenging the PAPUC’s statutory authority to impose self-executing remedies, and we expressly rely upon that

unconditional withdrawal for our conclusion that the PAP is adequate and permanent in nature.

Finally, the PAPUC approved an interim Code of Conduct for Verizon PA and a functional separation of its retail and wholesale operations which further ensures that CLECs will have non-discriminatory access to Verizon PA's wholesale services and to prevent other market power abuses by Verizon PA in its local exchange markets. The PAPUC has also directed its staff to promulgate a permanent, more comprehensive Code of Conduct applicable to Verizon PA and all of its present or future affiliates and divisions to assure the provision of reasonable nondiscriminatory access of its network to all CLECs. These functional/structural and non-structural remedies imposed by the PAPUC on Verizon PA are additional factors that were considered by the PAPUC in concluding that Verizon PA's local market will remain open to competition and will not be subject to backsliding after the 271 application is granted by the FCC.

The PAPUC has concluded that the Pennsylvania local telephone markets are irreversibly open to competition. The PAPUC further finds that allowing Verizon PA into the in-region long distance market will provide additional public benefit by giving Pennsylvania customers greater choice in that market as well. Therefore, with open local markets supported by functional/structural separation of Verizon PA and more long distance choice, the PAPUC concludes that approval of Verizon PA's application is in the public interest. Therefore, the PAPUC recommends that the FCC grant Verizon PA section 271 authority to offer in-region, long distance telephone service in Pennsylvania.

I. BACKGROUND ON TELECOMMUNICATIONS COMPETITION IN PENNSYLVANIA

Even prior to enactment of TA-96, the Pennsylvania General Assembly and the PAPUC were actively involved with supporting the introduction of local exchange competition in Pennsylvania. In 1993, the General Assembly added Chapter 30 to the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 3001-3009, with one of its stated purposes to “[p]romote and encourage the provisions of competitive services by a variety of service providers on equal terms throughout” the state. 66 Pa. C.S. § 3001(7). Another policy declaration of Chapter 30 is to “[p]rovide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout [the state in ways that] do not impede the development of competition.” *Id.* at § 3001(4).

Pursuant to this express authority granted under Chapter 30 to promote local telephone competition, the PAPUC certified the first four CLECs on October 4, 1995.³ With the passage of TA-96, the PAPUC opened another proceeding to address the need for an imputation requirement on intraLATA toll services provided by local exchange carriers (“LECs”).⁴ Subsequently, the PAPUC entered an order in that implementation proceeding imposing an imputation requirement only on Verizon PA’s predecessor, Bell Atlantic-Pennsylvania, Inc. (“BA-PA”).⁵ More recently, the PAPUC opened a docket to

³ Application of MFS Intelenet of Pennsylvania, Inc., et al., Docket Nos. A-310203F0002, et al. (Order entered October 4, 1995) (“MFS - Phase I Order”).

⁴ Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers, Docket No. M-00960799. The term “imputation” generally refers to those requirements necessary to ensure that an ILEC incorporates in its cost-of-service calculations the same access charges on itself as it imposes on other competitors for the delivery of any service function that both the ILEC and its competitors need to deliver a service.

⁵ *Id.* (Order entered September 9, 1996). Bell Atlantic-Pennsylvania, Inc. changed its name to Verizon Pennsylvania Inc. after the company’s parent, Bell Atlantic Corporation, acquired GTE Corporation last year.

develop competitive safeguard regulations aimed at protecting competition by ensuring that LECs provide reasonable nondiscriminatory access to its services and facilities by competitors and by preventing the subsidization of competitive services through revenues earned from noncompetitive services.⁶

Other proceedings as well were initiated before the PAPUC after passage of TA-96 to facilitate the opening of local telecommunications markets within Pennsylvania to competition. These proceedings, *inter alia*, addressed issues relating to access charges, rates for unbundled network elements (“UNEs”), universal service, and, as already discussed above, competitive safeguards.

Of particular relevance to the instant proceeding is the PAPUC’s order entered August 7, 1997, establishing permanent UNE rates for BA-PA and expressing our prerogative to institute an investigation within one year thereafter to reexamine these rates to ascertain their continuing viability.⁷ Based on information received at a follow-up benchmark technical conference, the PAPUC did institute an investigation to reexamine BA-PA’s UNE rates and terms for providing access to its network.

Subsequently, at the Public Meeting of September 3, 1998, Chairman John M. Quain and former Commissioner David Rolka issued a joint statement announcing the creation of a “global” settlement conference involving a host of telecommunications issues, including all the ones noted immediately above. All segments of the telecommunications industry were offered an opportunity to participate in the substantive

⁶ Rulemaking Re Generic Competitive Safeguards Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2), Docket No. L-00990141 (Proposed Rulemaking Order entered November 30, 1999). This proposed rulemaking order was later withdrawn by the PAPUC and is now the proceeding by which the PAPUC is undertaking the development of a more comprehensive Code of Conduct to ensure nondiscriminatory access to Verizon PA’s and other ILEC’s networks and facilities by competitors.

⁷ Application of MFS Intelenet of Pennsylvania, Inc. et al., Docket Nos. A-310203F0002, *et al.* (Order entered August 7, 1997) (“MFS - Phase III Order”).

settlement discussions that followed for the purpose of exploring an integrated resolution of the myriad and complex issues presented.

Ultimately, on March 1, 1999, the global settlement conference expired following the issuance of a third and final confidential “term sheet” by Chairman Quain and Commissioner Rolka to all the participants offering a proposed resolution of all the issues presented in the global settlement conference. The two commissioners terminated their involvement in the settlement discussions as no settlement was reached.

On March 18, 1999, Nextlink Pennsylvania, Inc. (now known as XO Communications Inc.) (“XO”); State Senators Vincent J. Fumo, Roger A. Madigan, and Mary Jo White; MCI MCIW Communications, Inc. (“MCIW”); the Pennsylvania Cable & Television Association (“PCTA”); RCN Telecommunications Services of Pennsylvania, Inc. (“RCN”); Hyperion Telecommunications, Inc.; ATX Telecommunications (now known as ATX Licensing, Inc.) (“ATX”); CTSI, Inc. (“CTSI”); and AT&T Communications of Pennsylvania, Inc. (“AT&T”) filed a Petition of Adoption of Partial Settlement Resolving Telecommunications Issues docketed at P-00991648 (“1648 Petition”). Also on March 18, 1999, the Petition of Verizon PA’s predecessor, BA-PA; Conectiv Communications, Inc. (“Conectiv”); Network Access Solutions; and the Rural Telephone Company Coalition (“RTCC”), was filed at P-00991649 (“1649 Petition”) to resolve a number of telecommunications issues pending before the PAPUC.

Both petitions, addressed, inter alia, the following issues: (1) toll and access charge reductions; (2) the establishment of a universal service fund; (3) rate cap on residential local exchange service; (4) business services to be declared competitive; (5) local competition through UNE rate reductions and the availability of UNEs on a combined, platform basis; (6) third-party testing of BA-PA’s (now Verizon PA) OSS; (7) a commitment by Verizon PA to develop comprehensive performance measures,

standards, and remedies; (8) availability of collocation and collocation alternatives reflecting price reductions and flat-rate pricing; (9) availability of enhanced extended loops (“EELs”) for use in conjunction with local exchange and associated local switched access services; (10) the introduction of a Code of Conduct for competitive safeguards; and (11) a clear framework for the evaluation of Verizon PA’s application to enter the in-region interLATA market as provided under section 271 of TA-96.

By order entered April 2, 1999, the PAPUC officially closed its earlier global settlement conference and agreed to consolidate the two competing petitions for purposes of discovery and resolution. Specifically, the PAPUC’s order provided for: (1) a pre-hearing conference before an administrative law judge to resolve procedural issues and develop stipulations, (2) the submission of pre-filed testimony and responsive testimony, (3) hearings *en banc* before the PAPUC, and (4) the filing of briefs and reply briefs. The order also provided that the issues relating to performance measures, standards, and remedies and OSS would not be addressed in the Global proceeding, but instead resolved in separate docketed proceedings.

The PAPUC resolved this consolidated proceeding by entering what has been referred to as the “Global Order” on September 30, 1999.⁸ The Global Order resolved numerous, interrelated issues regarding telecommunications services, rates and changes appropriate to advance the development of local telephone competition and ensure just and reasonable rates in furtherance of Chapter 30 of the Public Utility Code and TA-96. Among the most important issues addressed in the Global Order relevant to the instant 271 application were the PAPUC’s rulings: (a) setting forth the process and procedure the PAPUC intends to follow during a 100-day review period in developing its

⁸ Petition of Nextlink, et al., Docket No. P-00991648, and Petition of Bell Atlantic-PA, et al., Docket No. P-00991649 (September 30, 1999). (“Global Order”).

consultative report to the FCC under section 271(d)(2);⁹ (b) mandating reductions in Verizon PA's UNE rates charged to competitors; (c) requiring Verizon PA to make available combinations of UNEs and EELs to CLECs; (d) requiring Verizon PA to provide collocation alternatives and developing collocation standards and pricing points; (e) requiring Verizon PA to structurally separate its retail and wholesale operations in the state; (f) promulgating a Code of Conduct to ensure that Verizon PA provides fair and nondiscriminatory access to its services; and (g) creating separate universal service and consumer education funds. On October 25, 2000, the Pennsylvania Commonwealth Court, in a unanimous *en banc* decision, upheld the PAPUC's Global Order.

On April 11, 2001, the PAPUC entered an order in its separate structural separation proceeding offering Verizon PA the option of accepting by April 20, 2001, a functional/structural, rather than a corporate, separation of its retail and wholesale operations in return for agreeing to several other conditions.¹⁰ These conditions included, *inter alia*, agreeing to abide by the interim (and the yet-to-be-promulgated, permanent) Code of Conduct, adhering to the TA-96 section 251 resale/interconnection obligations for advance services such as digital subscriber line ("DSL") transport services to CLECs, agreeing to an increase in the penalties for violations of the performance metrics, agreeing to an immediate 75 cent reduction in the 2-wire loop rates in the most rural portions of the state, and withdrawing all of its appeals in the Global proceeding. Verizon PA accepted this option by the deadline.

⁹ The process and procedure outlined in the Global Order included the following elements: a final independent third-party OSS test, a determination that Verizon PA has passed the third-party OSS test, the commencement of a 90-day commercial availability period, the opportunity to submit comments or written testimony, *en banc* hearings, and submission of the PAPUC's consultative report to the FCC. Global Order at 254-60.

¹⁰ Re: Structural Separation of Bell Atlantic-PA, Inc. Retail and Wholesale Operations, Docket No. M-00001353 (Order entered April 11, 2001) ("Functional/Structural Separation Order").

Additionally, on June 8, 2001, the PAPUC entered a final order outlining the terms and conditions for provisioning collocation arrangements at Docket Nos. R-00994697 and R-00994687C0001. In that order the PAPUC directed Verizon PA to file within 30 days of the entry date of the Order, a tariff or tariff supplement amending Tariff Pa. P.U.C. 218, to be effective on 1-day's notice. The tariff or tariff supplement is to be consistent with the determinations contained within the Order relating to provisioning intervals, forecasts, performance incentives and penalties, exemption petitions, space reservation, reclamation of space, space termination and advance notice for competitive carriers entry to premises containing Cageless Collocation - Open Environment collocation arrangements.

On June 8, 2001, the PAPUC also issued an interim order at Docket No. R-00005261 addressing and resolving pricing issues associated with the UNEs that remained unpriced after the conclusion of the Global Order proceeding, as well as some further changes necessitated by the FCC's UNE Remand Order.¹¹ In this interim order we addressed the appropriate input elements for the total element long run incremental cost ("TELRIC") study, and rates for the following UNEs: xDSL loops, line sharing, remote terminal collocation, dark fiber, sub-loop unbundling, EELs, UNE-P, Operator Services and Directory Assistance ("OS/DA"), switch ports, and ISDN electronics.

Verizon PA was directed to re-run its cost study for these UNE and to file revised tariffs and rates consistent with those re-run cost studies within 20 days. Verizon PA's proposed rates, with certain limited exceptions, were permitted to remain in effect as interim rates. However, upon PAPUC review and approval of Verizon PA's compliance filing, the compliance filing UNE rates shall be deemed final and permanent.

¹¹ In the Matter of Implementation of the Local Competition Provisions of TA-96, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696. ("UNE Remand Order")

II. PROCEDURAL HISTORY

After passage of TA-96, the PAPUC initially opened a docket in August 1996 on its own motion to develop a record to assist it in fulfilling its consultative role to the FCC with respect to the then anticipated filing of a section 271 petition by Verizon PA's predecessor, BA-PA.¹² On or about February 10, 1997, BA-PA pre-filed a section 271 application for in-region interLATA toll service with the PAPUC, which application was incorporated into the earlier docketed proceeding. BA-PA and other interested parties filed substantial information in this earlier docket on whether BA-PA satisfied its various statutory requirements under section 271. On April 3, 1997, the PAPUC held an *en banc* hearing on BA-PA's pre-application filing. Subsequently, however, the PAPUC terminated this earlier proceeding by order entered December 18, 1997, because it found that the information presented in that proceeding had become stale and outdated.¹³

Thereafter, on May 12, 1998, the PAPUC opened another docket to review BA-PA's entry into in-region interLATA services under section 271 of TA-96.¹⁴ This proceeding offered a Pennsylvania-specific draft of a pre-filing statement modeled after a similar statement that had been adopted by the New York Public Service Commission on April 6, 1998. The New York statement contained a series of section 271-related commitments from Bell Atlantic-New York, Inc. in conjunction with its section 271 request for New York State. BA-PA and other interested parties filed comments to the Pennsylvania-specific statement in the summer of 1998. Subsequently, however, this

¹² In re: Bell Atlantic-PA's Entry Into In-region InterLATA Services Under Section 271 of TA-96, Docket No. M-00960840 (Order entered August 16, 1996).

¹³ In re: Bell Atlantic-PA's Entry Into In-region InterLATA Services Under Section 271 of TA-96, Docket No. M-00960840 (Order entered December 18, 1997).

¹⁴ In re: Bell Atlantic-PA's Entry into In-region InterLATA Services Under Section 271 of TA-96, Docket No. I-00980075 (Order entered May 12, 1998).

proceeding was rolled into the Global proceeding discussed in the previous section and was thereafter closed upon entry of the Global Order in September 1999.

As noted above, the Global Order is significant herein, inter alia, because it established the process and procedure that the PAPUC has utilized in developing its consultative report to the FCC under section 271(d)(2). In addition, the PAPUC issued three other orders relating to performance measures, standards, and remedies and OSS issues that are highly relevant to the present proceeding: the Performance Measures Order (“PMO”) entered December 31, 1999, the PMO Reconsideration Order entered July 21, 2000, and the PMO Compliance Filing Order entered September 1, 2000, all at Docket No. P-00991643

The PAPUC contracted with KPMG Consulting and Verizon PA to conduct a test of Verizon PA’s OSS. Prior to entering into this three-party contract, KPMG Consulting was engaged by Verizon PA to perform this test. On March 5, 1999, KPMG Consulting submitted a draft Master Test Plan, and five companies thereafter filed comments to the plan -- AT&T, MCIW, Sprint Communications Company, L.P. (“Sprint”)/The United Telephone Company of Pennsylvania (“United”) (or “Sprint/United,” jointly), Intermedia Communications, Inc., and Verizon PA. KPMG Consulting filed a second version of the Master Test Plan (“MTP”), dated March 25, 1999, in which it made some revisions in response to the comments received. The PAPUC approved the Final MTP by order entered May 3, 1999, conditioned only on the PAPUC subsequent approval and execution of the three-party contract to which KPMG Consulting was to perform the OSS testing.¹⁵

During the same time period, the PAPUC approved a joint petition filed by ten CLECs and interexchange carriers (“IXCs”) to establish a formal adversarial proceeding

¹⁵ Contract for Evaluation and Testing of Bell Atlantic-PA’S OSS, Docket No. M-00991228 (entered May 3, 1999).

to develop performance measures, standards and self-executing remedies.¹⁶ On December 31, 1999, in its performance metrics proceeding, the PAPUC entered an order adopting the revised Pennsylvania Carrier-to-Carrier Guidelines: Performance Measures, Standards and Reports (“C2C Guidelines”) to be used relative to OSS testing for Verizon PA’s dealings with CLECs.¹⁷ The C2C Guidelines adopted in this order became effective 20 days thereafter, with the financial incentives and remedies to be phased in beginning April 1, 2000.¹⁸

Following approval of the contract with KPMG Consulting and throughout most of the year 2000, the PAPUC staff, KPMG Consulting and Verizon PA representatives met regularly to ensure that the company’s metrics were reported reliably, and they also met to ensure the adequacy of internal controls surrounding the data collection process. In addition, on a monthly basis, PAPUC staff verified that Verizon PA’s reported results conformed to the C2C Guideline definitions.

By November 2000, several key events occurred relating to Verizon PA’s process towards authority to provide in-region interLATA service in Pennsylvania. On November 9th, KPMG Consulting issued and made public its Draft Final Report of the Verizon PA OSS Evaluation Project in Pennsylvania at Docket No. M-0091228. The PAPUC thereafter allowed 30 days for technical workshops to permit input by interested parties. Also, by order entered November 14, 2000, the PAPUC modified its C2C Guidelines at Docket No. P-00991643 for the final time, finding that the performance

¹⁶ Joint Petition of Nextlink Pennsylvania, Inc. et al. for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and OSS Testing for Bell Atlantic-PA, Inc., Docket No. P-00991643 (Order entered April 30, 1999) (the PAPUC denied in the same order the joint petition’s request to have the OSS testing formalized in an on-the-record proceeding).

¹⁷ Joint Petition of Nextlink Pennsylvania, Inc. et al. for an Order Establishing a Formal Investigation of Performance, Standards, Remedies, and OSS Testing for Bell Atlantic-PA, Inc., Docket No. P-00991643 (Order entered December 31, 1999).

¹⁸ Id. at 2, 179.

measures and standards are now final and ready for use to evaluate Verizon-PA's post-OSS commercial operations in Pennsylvania.¹⁹ Finally, on November 30, 2000, the PAPUC entered a procedural order to set forth the process and the procedures it would follow in order to gather the information necessary for its section 271 consultative report to the FCC.²⁰

On December 22, 2000, KPMG Consulting submitted its Final Report Release 2.0 of the Verizon PA OSS Evaluation Project for Pennsylvania. KPMG Consulting reported that "none of the Transaction Validation and Verification ("TVV") or Policy Procedures Review ("PRR") evaluation criteria rated Not Satisfactory within this report are likely to produce a material adverse effect on competition." By Secretarial Letter dated January 5, 2001, the PAPUC advised Verizon PA that it deemed KPMG Consulting's Final Report as a passing grade. The PAPUC also advised that it would allow the commercial availability period to begin, effective January 1, 2001, on the condition that Verizon PA contract with KPMG Consulting to conduct a replication study of the first 30 days of the commercial availability period. Verizon PA was given three days to provide written acceptance of this condition, at which time Verizon PA was authorized to file its 100-day notice in accordance with the Global Order and the Section 271 Procedural Order.

On January 8, 2001, Verizon PA provided its written acceptance of this condition and filed with the PAPUC a copy of a preliminary application ("Compliance Filing") that Verizon PA intended to submit to the FCC for its consideration. The PAPUC docketed Verizon PA's filing at Docket No. M-00001435. The process and procedures established

¹⁹ As already discussed above, the PAPUC subsequently increased the Tier II liquidated damages portion of its PMO in its April 11, 2001 Order as part of its decision to require the functional/structural separation of Verizon PA's retail and wholesale operations. The increased penalties imposed by that order were intended to act as a further disincentive for Verizon PA to discriminate against CLECs in accessing Verizon PA's network.

²⁰ Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Docket No. M-00001435 (Order entered November 30, 2000) ("Section 271 Procedural Order").

by the Global Order and its Section 271 Procedural Order were then utilized to provide the procedural framework for the PAPUC's evaluation of the application.

The participants in the PAPUC's section 271 proceeding were as follows: DOJ; AT&T; MCIW; Covad Communications Company ("Covad"); Rhythms Links ("Rhythms"); ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. ("e.spire"); CTSI, Cavalier Telephone Mid-Atlantic, LLC ("Cavalier"); Conectiv; Winstar Wireless of Pennsylvania, LLC ("Winstar"); Sprint; United; Z-Tel Communications, Inc. (Z-Tel"); Network Access Solutions Corp. ("Network Access"); ATX; XO; RCN; FiberNet Telecommunications of Pennsylvania, LLC ("FiberNet"); FairPoint Communications Solutions Corp. ("FairPoint"); Essential.com Inc. ("Essential"); A.R.C. Networks, Inc. t/a InfoHighway Communications Corp. ("A.R.C."); Metropolitan Telecommunications ("Metropolitan"); Conestoga Communications, Inc. ("Conestoga"); Telebeam, Inc. t/a CEI Networks ("Telebeam"); Full Service Computing Corporation t/a Full Service Networks ("Full Service"); Office of Consumer Advocate ("OCA"); PAPUC's Office of Trial Staff ("OTS"); Office of the Small Business Advocate ("OSBA"); PCTA; State Senators Mary Jo White and Roger A. Madigan ("White & Madigan"); State Senator Gibson E. Armstrong ("Armstrong"); State Senator Robert M. Tomlinson ("Tomlinson"); City of Philadelphia ("Philadelphia"); Association of Communications Enterprises ("ACE"); Penn Telecomm, Inc. (PTI) and the Central Atlantic Payphone Association ("CAPA").

Discovery of Verizon PA's filing commenced immediately and ran for a 27-day period, ending on February 5, 2001. During discovery, the PAPUC issued approximately 120 information requests to Verizon PA based upon the Compliance Filing. The information requests included CLEC questions that had been solicited and reviewed by PAPUC staff for relevance to the section 271 inquiry. Consistent with our section 271 consultative role, the PAPUC incorporated the questions as its own to develop a record to discharge that role.

On February 12, 2001, CLECs filed comments to Verizon PA's filing. Discovery of CLECs' comments to Verizon PA's filing then occurred until March 12, 2001. Seventeen parties filed final comments/briefs on the filing. Eighty-two stipulations were filed by various parties. Numerous in-hearing data requests were also served on various CLECs to which the PAPUC and other participating parties received responses.

In addition, from January 26 to April 5, 2001, the PAPUC held 24 days of technical conferences in which witnesses supplied by Verizon PA and CLECs were questioned by PAPUC staff and, as appropriate, by any participating party.²¹ Three days of *en banc* hearings were subsequently held before the PAPUC Commissioners on April 25, 26, and 27.

On June 6, 2001, the PAPUC issued a secretarial letter conditionally approving Verizon PA's Compliance Filing.²² Specifically, the PAPUC found that Verizon PA has demonstrated its compliance in most respects in regard to the statutory requirements of section 271, but that further action would need to be taken to demonstrate that the local exchange and access markets in Pennsylvania are fully and irreversibly open to competition. This further action included Verizon PA withdrawing its appeal challenging the PAPUC's authority to impose self-executing remedies, establishment of voluntary self-executing remedies of \$25,000 for metrics missed beyond 90 days, and the imposition of a rebuttable presumption that features of the New York remedies plan should be adopted and made applicable to Pennsylvania. In regard to electronic billing, Verizon PA would also be required to augment the current PAP by making billing

²¹ The PAPUC is aware that Verizon PA may from time to time enter into settlement agreements with competing carriers. Such agreements are subject to the PAPUC's review under the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 101-3316, and related regulations.

²² Dissenting statements were issued by Commissioner Nora Mead Brownell and Commissioner Terrance J. Fitzpatrick. Copies of PAPUC's June 6, 2001 Secretarial Letter and the dissenting statements of Commissioners Brownell and Fitzpatrick are attached to this report.

metrics applicable to the paper bill applicable to electronic billing; voluntarily increase electronic billing remedy payments, such rates being in effect until the conclusion of the further proceeding called for in Paragraph 16 of the PAPUC's Functional/Structural Separation Order, or for performance through December 31, 2001.

On June 7, 2001, consistent with the PAPUC's June 6, 2001 Secretarial Letter, Verizon PA filed a letter notifying the PAPUC that it accepted the conditions in the Secretarial Letter and a praecipe withdrawing its current appeal challenging the PAPUC's statutory authority to impose self-executing remedies. The June 6, 2001 Secretarial letter and Verizon PA's acceptance letter are contained in Appendix I to this consultative report.

III. VERIZON PA COMPLIANCE WITH SECTION 271(C)(1)(A) -- PRESENCE OF FACILITIES-BASED COMPETITION

A. Description of Issue

In order for the Commission to approve a Bell Operating Company's ("BOC") application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B). To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers." TA-96 states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier." 47 U.S.C. § 271(d)(3)(A).

B. Standard of Review

In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket 97-137, Memorandum Opinion and Order, FCC 97-298, at ¶ 85 (rel. August 19, 1997) ("Ameritech Michigan 271 Order"), the FCC concluded that when a BOC relies upon more than one competing provider, section 271(c)(1)(A) does not require each carrier to provide service to both residential and business subscribers.²³

C. Summary of Evidence before PAPUC

Verizon PA states that competition in the local telephone market is robust and continues to grow. Whelan Supp. Dec. at ¶ 2. As of April 18, 2001, Verizon PA claims

²³ See also In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for the Provision of In-Region, InterLATA Services in Louisiana, CC

that there were 164 interconnection agreements that had been approved by the PAPUC. Of these interconnection agreements, 77 were with facilities-based carriers, 67 were for resale, and 20 were for wireless service. Also, Verizon PA states that the number of CLECs being approved for operation in Pennsylvania is increasing and indicates, as of that same date, that there were 205 CLECs that have been approved for operation in Pennsylvania and there are 47 applications for authority pending. Verizon PA states that the number of CLECs have increased 300% since 1997. See Whelan Supp. Dec. Att. 117.

In regard to CLECs market activity, as of December 2000, Verizon PA states that there were 92 active CLECs in its service territory.²⁴ Indicators of CLEC activity include the purchase of resold lines, interconnection trunks; facilities-based listing in E911 database or directories; ported telephone numbers, and payment of penalties under performance plan.²⁵

Verizon PA states that CLECs are serving both residential and business customers. Verizon PA specifically lists 12 CLECs that collectively are providing facilities-based local exchange service to residential and business customers. These CLECs include Adelphia Business Solutions, Allegiance Telecom Inc., AT&T, Corecom (formerly ATX Telecommunications); Choice for Communications; CTSI; Intermedia Communications, Focal Communications, MCIW, RCN, XO, and Z-Tel.²⁶

Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, at ¶¶ 46-48 (rel. October 13, 1998). (“Second BellSouth Louisiana 271 Order”).

²⁴ Verizon PA Resp. to In-Hearing Data Req. 89

²⁵ Verizon PA Resp. to In-Hearing Data Req. 77.

²⁶ Whelan Dec. at ¶¶ 12-23.